



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

GUYTON DONHAM
~~XXXXXXXXXX~~

**Honorable K. D. Hall
County Attorney
Refugio County
Refugio, Texas**

Dear Sir:

Opinion No. 0-2421

**Re: Is it possible to pay a
justice of the peace a
salary in counties having
a population of 10,000 in-
habitants or less?**

**Your recent request for an opinion of this De-
partment on the above stated question has been received.**

We quote from your letter as follows:

**"I would like to know whether or not it
is possible to pay a Justice of the Peace a
salary in counties of 10,000 or less.**

**"I do not find any law on the subject,
however, I received a ruling from the Attor-
ney General's Department a few years ago stat-
ing that a Constable could be paid a salary
and I believe it also stated a Justice of the
Peace could be paid a salary. The ruling I
mention was turned over to the County Judge
and he has either lost or misplaced it.**

". . ."

**In our opinion No. 0-316 (Conference Opinion
3045) it was held that:**

**"The Commissioners' Court is without
authority to place one precinct officer upon
a salary basis and leave other officers upon
a fee basis. The System must be uniform and
the Commissioners' Court must place all of
the precinct officers upon a salary basis or
leave all upon a fee basis under Salary Law.**

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"Where the Commissioners' Court places the precinct officers of a county upon the salary basis as outlined in the Officer's Salary Law, the Commissioners' Court has no authority to set a precinct officer's salary at less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935 and that the Commissioners' Court has no authority to set a precinct officer's salary at more than the maximum amount allowed such officer under laws existing August 24, 1935."

Section 2 of Article 3912e, Vernon's Annotated Civil Statutes reads as follows:

"The Commissioners' Court of each county in the State of Texas, at its first regular meeting in January of each calendar year, shall, by order made and entered in the minutes of said court, determine whether precinct officers of such county (except public weighers and registrars of vital statistics) shall be compensated on a salary basis as provided for in this Act, or whether they shall receive as their compensation, such fees of office as may be earned by them in the performance of the duties of their offices, and it shall be the duty of the county clerk of each county to forward to the comptroller of Public Accounts of the State of Texas on or before the 31st day of January a certified copy of such order . . ."

Section 17a of Article 3912e, Vernon's Annotated Civil Statutes reads in part as follows:

"(a) The term 'Precinct Officers' as used in this Act means justices of the peace and constables.

"In all counties in this State such precinct officers shall continue to be compensated for their services on a fee basis until the Commissioners' Court shall have determined otherwise in accordance with the provisions of Section 2 of this Act.

" . . ."

Section 15 of Article 3912e, Vernon's Annotated Civil Statutes provides in part that

"The Commissioners' Court in counties having a population of less than twenty

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thousand (20,000) inhabitants, according to the last preceding Federal census at the first regular meeting in January of each calendar year, may pass an order providing for compensation of all county and precinct officers on a salary basis. . ."

We have been unable to locate a copy of the opinion referred to in your inquiry; however, we are enclosing herewith a copy of our opinion No. 0-516 (Conference opinion No. 3045) for your convenience.

In view of the foregoing statutes and the above mentioned Conference Opinion, you are respectfully advised that it is the opinion of this Department that it is not possible to compensate a justice of the peace on a salary basis in counties having a population of less than twenty thousand inhabitants according to the last preceding Federal census unless all the precinct officers in said county are compensated on a salary basis, and the commissioners' court in said county has passed an order providing for the compensation of all precinct officers in the county on a salary basis at the first regular meeting in January of the calendar year in question.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed) Ardell Williams
Assistant

AW:ew:jrb
Encl.

APPROVED JUNE 24, 1940
(Signed) Grover Sellers

FIRST ASSISTANT ATTORNEY GENERAL APPROVED OPINION COMMITTEE
BY EWB
Chairman